



**University of California
Ernest Orlando Lawrence
Berkeley National Laboratory**

GENERAL PROVISIONS FOR COST REIMBURSABLE SUBCONTRACTS

DEFINITIONS

As used herein, the following terms shall have the indicated meanings:

- "Government" means the United States Government;
- "DOE" means the U. S. Department of Energy;
- "University" means The Regents of the University of California, acting through the LBNL;
- "LBNL" means the Ernest Orlando Lawrence Berkeley National Laboratory;
- "Patent Counsel" means the DOE Patent Counsel.
- "Subcontract" means this Subcontract with the University;
- The term "Subcontractor" means the party who has entered into this Subcontract with the University;
- The term "subcontractor" means the Subcontractor's subcontractor(s).

OPTION TO EXTEND PERFORMANCE OF SUBCONTRACT.

The Berkeley Laboratory may extend the total duration of this Subcontract, including the exercise of any options, for a period not to exceed five years. Approval to proceed with additional options or performance periods shall be authorized only by LBNL Procurement with an amendment to this Subcontract. The cost for any Options or extended periods of performance will be based upon the reasonable, allowable, and allocable expenditures under the present period of performance and current Government indirect rates, or appropriate negotiated lesser amounts.

OPERATING ASSURANCE

The Subcontractor bears primary responsibility for the research. The Subcontractor shall use its own best ability, skill and care in the performance of work. Specifically, the Subcontractor shall be responsible for the professional quality, technical accuracy and the coordination of all data, reports, documentation and other services furnished by the Subcontractor under this Subcontract. The Subcontractor shall, without additional compensation, correct or revise any errors or deficiencies in its data, reports, documentation, and other services.

KEY PERSONNEL

The Subcontractor's Principal Investigator or Representative: (A.) will devote a reasonable amount of time to the work; (B.) be closely involved and continuously responsible for the conduct of the work; (C.) will not be replaced unless approved by LBNL; and (D.) will advise LBNL if she/he will devote substantially less effort to the subcontract than anticipated. It is understood and agreed that any key technical individual(s) assigned to this work shall not be reassigned to other work that will interfere with the research and support activities under this Subcontract without prior LBNL approval, except in circumstances beyond the reasonable control of the Subcontractor. If such circumstances arise, the Subcontractor shall inform the LBNL Procurement Specialist and the Technical Coordinator of such reassignments within (5) working days. A replacement individual shall be assigned by the Subcontractor and approved by the LBNL Coordinator within ten (10) working days. If an acceptable individual is not identified; LBNL reserves the right to terminate this Subcontract.

BASIS OF AGREEMENT

The Subcontractor undertakes to provide research and/or services to the LBNL based on the position(s), knowledge, education, experience(s), and/or publication(s) described in the Subcontractor's proposal to LBNL. LBNL acknowledges and accepts these credentials and statements based, on the data contained in said proposal as a sufficient basis for entering into this Subcontract with the Subcontractor. However, LBNL shall hold the Subcontractor responsible for the authenticity of the knowledge, education, experience and/or publications as stated in the Subcontractor's proposal.

TRAVEL

This Subcontract may include estimated funds for various domestic round trips deemed necessary by the LBNL Technical Coordinator. Only actual travel costs will be paid in accordance with the Federal Travel Regulations and Berkeley Laboratory Travel policies, attached as needed. Any Foreign Travel (any travel outside of the United States and its territories and possessions) will require prior written approval by LBNL and DOE.

INDEMNIFICATION

Subcontractor hereby agrees to defend, indemnify, and hold the University, the DOE, and their respective officers, agents, and employees harmless from and against any and all claims, demands, fines, judgments, awards, and lawsuits for liability for damages for personal injury, bodily injury (including death), and damage to property (including the loss of use thereof) arising out of Subcontractor's performance of this order, except for such claims, demands, fines, judgments, awards, and lawsuits, which result from the sole negligence or the willful misconduct of the University, the DOE, and/or their respective officers, agents, and/or employees.

PRICING OF ADJUSTMENTS

When costs (including fixed fee) are a factor in any determination of a Subcontract price adjustment pursuant to the "changes" clause or any other provision of this Subcontract, such costs shall be in accordance with the contract cost principles and procedures in Part 31 of the Federal Acquisition Regulation (48 CFR Part 31), as supplemented or modified by DEAR Part 931 (48 CFR Part 931) in effect on the date of this Subcontract.

WITHHOLDING OF PAYMENT

(If the Subcontract is Cost-Reimbursable (No Fee))

Anytime before final payment of the amount of this Subcontract, the Procurement Specialist may, if he or she deems such action warranted, withhold payment until a reserve not exceeding \$50,000 or 5% of the amount (1% of the amount shall be withheld if the subcontractor is a non-profit organization) of this subcontract, whichever is less, shall have been set aside.

The retention or balance shall be withheld until the Procurement Specialist has determined that the Subcontractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required under the subcontract.

Release of the retention amount under this Subcontract shall not be made by the Procurement Specialist before the Subcontractor delivers to Patent Counsel all disclosures of subject inventions and any other information or reports required by the Patent Rights article in this subcontract, and Patent Counsel has issued a patent clearance certification to the Procurement Specialist. The Procurement Specialist may, in his or her discretion, decrease or increase the sums withheld up to the maximum authorized above.

The withholding of any amount or subsequent payment thereof shall not be construed as a waiver of any rights accruing to the Government under this Subcontract. The Subcontractor shall include the Patent Rights article in any subcontract, regardless of tier, as appropriate.

ASSIGNMENTS

This subcontract may be assigned by the University to the U.S. Government or a successor-in-interest.

Except as to assignment of payment due hereunder, the Subcontractor shall have no right, power or authority to sell, mortgage, transfer or assign this Subcontract, any portion hereof, any interest herein or any claim hereunder, nor allow or permit any other party or parties to have any interest in or use any part of the rights or obligations granted hereunder for any purpose whatsoever without the prior written consent of the University

FORCED, CONVICT, AND INDENTURED LABOR

(a) By signing or accepting this subcontract, the Subcontractor hereby certifies that no foreign-made equipment, materials, or supplies furnished to the University pursuant to this subcontract will be produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction.

(b) Any Subcontractor subcontracting with the University who knew or should have known that the foreign-made equipment, materials, or supplies furnished to the University were produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction, when entering into a subcontract pursuant to the above, may have any or all of the following sanctions imposed:

(1) The subcontract under which the prohibited equipment, materials, or supplies were provided may be voided at the option of the University.

(2) The Subcontractor may be removed from consideration for University subcontracts for a period not to exceed 360 days.

WALSH-HEALY PUBLIC CONTRACTS ACT

If this subcontract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed \$10,000 and is otherwise subject to the Walsh-Healy Public Contracts Act, as amended (41 U.S.C. 35 through 45), there are hereby incorporated by reference all stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect.

DISPUTES

Except as otherwise provided in this Subcontract, any dispute concerning a question of fact arising under this Subcontract, shall be decided by the UC/LBNL Chief Financial Officer, or designee. Such decision shall be reduced to writing and a copy thereof mailed or otherwise furnished to the Subcontractor. Within 30 days after date of receipt of such copy, Subcontractor may notify the University in writing of its disagreement with the University's decision and, in the absence of such notice, the University's decision shall be final. The Subcontractor may pursue any right or remedy it may have, at law or in equity, in any court of competent jurisdiction. Pending resolution of

such action, the Subcontractor shall proceed diligently with the performance of the Subcontract in accordance with the University's decision.

NOTICES - INABILITY TO PERFORM; LITIGATION AND CLAIMS

The Subcontractor shall give the University immediate notice in writing of (1) any action, including any proceeding before an administrative agency, filed against the Subcontractor arising out of the performance of this Subcontract, and (2) any claim against the Subcontractor, the cost and expense of which is allowable under the terms of this Subcontract.

If, at any time during the performance of this Subcontract, the Subcontractor becomes aware of any circumstances whatsoever which may jeopardize its fulfillment of the agreed performance of all or any portion of the Subcontract, it shall immediately notify the LBNL's Procurement Specialist in writing of such circumstances, and the Subcontractor shall take whatever action is necessary to cure such defect within the shortest possible time.

LIABILITY WITH RESPECT TO COST ACCOUNTING STANDARDS

Reference is made to the clause entitled "Cost Accounting Standards," of this Subcontract. Notwithstanding the provisions of that clause, or of any other provision of this Subcontract, the Subcontractor shall be liable to the University for any increased costs, or interest thereon, resulting from any failure of the Subcontractor, with respect to activities carried on at the site of the work, or of a subcontractor, to comply with applicable cost accounting standards or to follow any practices disclosed pursuant to the requirements of such clause.

SAFETY MANAGEMENT PLAN AND REPORTING

(Applicable to Subcontractors with ten or more employees working at University or Government-owned sites or facilities [herein called LBNL Site] except for work involving construction and contract labor when Subcontractor's employees receive specific task assignments from University employees.)

(a) Subcontractor shall, upon award of the Subcontract, submit a copy of Subcontractor's Safety Management Plan for University approval to LBNL's EH&S Field Support Department, MS 90-1140. Subcontract work may not begin at the LBNL site until approval of the plan has been given by the University's EH&S Field Support Department. The Safety Management Plan shall satisfy, as a minimum, the requirements for the Injury and Illness Prevention Program required by Cal-OSHA General Industry Safety Orders §3203. University approval of this plan shall be considered as meeting DOE requirements for Integrated Safety Management. University approval of the plan is for the purpose of verifying that the plan meets University requirements and is not an endorsement of the adequacy of the plan for protecting Subcontractor's employees from all occupational injuries and illness cases. Assuring the safety and health of Subcontractor's employees shall at all times remain the responsibility of the Subcontractor.

(b) Subcontractor shall report all injuries to Subcontractor's employees that qualify for inclusion on Subcontractor's Cal-OSHA log to the University within 10 days of occurrence of the injury. Subcontractor shall furnish a copy of its supplemental injury report form (OSHA form 101 or equivalent) for each such case. This report shall be mailed to the LBNL SAAR Office, Health Services, MS 26-109. In addition, serious injuries resulting in death or hospitalization shall be reported by telephone immediately to the LBNL Health Services Receptionist, (510) 486-6266.

(c) Subcontractor shall report to the University the hours worked by Subcontractor's employees on the LBNL Site on a quarterly basis. For each quarter, the hours worked shall be reported in writing no later than the 10th day of the month following the end of the quarter. This

report shall be mailed to the LBNL SAAR Office, Health Services, MS 26-109.

RELEASE OF INFORMATION

Information regarding this Subcontract or the undertaking or any data developed hereunder shall not be released, and the name of the University, LBNL, or the Government shall not be used, in any publications, news releases, advertising, speeches, technical papers, photographs and other releases of information, without prior written approval from the LBNL Procurement Representative.

RELEASE, PUBLICATION AND USE OF DATA

(Applicable to Subcontracts involving production of computer software. When applicable, the Subcontractor shall include this clause in its subcontracts at any tier.)

The Subcontractor agrees not to establish claim to copyright in computer software first produced in the performance of this Subcontract without prior written permission being granted by the DOE Patent Counsel. The DOE Patent Counsel shall specify appropriate terms, conditions, and submission requirements to assure utilization, dissemination, and commercialization of the data. The Subcontractor, when requested, shall promptly deliver to the DOE Patent Counsel, a duly executed and approved instrument fully confirming all rights to which the Government is entitled.

ENTIRE AGREEMENT AND ORDER OF PRECEDENCE

This Subcontract shall consist of the Subcontract Signature Page, any Special Provisions, these General Provisions, and any other referenced and incorporated clauses, provisions and documents, which is the entire agreement between the parties concerning the subject matter hereof and supersedes all prior proposals, representations, negotiations, or agreements, whether written or oral.

Any inconsistencies in the terms and conditions comprising the Subcontract shall be resolved by giving precedence in the following order: (a) the Subcontract document; (b) any Special Provisions; (c) these General Provisions; (d) the clauses listed in the provision of these General Provisions entitled *CLAUSES INCORPORATED BY REFERENCE*; (e) any specifications; (f) other documents listed in the special provision entitled INCORPORATED DOCUMENTS, if any, in the order in which they are listed; and (g) any other documents, exhibits, or attachments.

CLAUSES INCORPORATED BY REFERENCE

The FAR and DEAR clauses listed below, which are located in Chapters 1 and 9, respectively, of Title 48 of the Code of Federal Regulations, are incorporated by this reference as a part of the University's Subcontract as prescribed below. As used in the clauses, the term "contract" shall mean the Subcontract; the term "Contractor" shall mean the entity (hereinafter "Subcontractor") who entered into the Subcontract with the University; the term "subcontractor" shall mean the Subcontractor's subcontractor; and the terms "Government" and "Contracting Officer" shall mean the University, except in clauses FAR 52.215-2, 52.227-1, 52.227-1 Alternate I, 52.227-2, 52.227-3, 52.227-14, and 52.227-19, and DEAR 952.227-11 and 952.227-13, in which clauses "Government" shall mean the U. S. Government and "Contracting Officer" shall mean the DOE Contracting Officer for Prime Contract DE-AC02-05CH11231 with the University.

THE FOLLOWING CLAUSES APPLY TO ALL SUBCONTRACTS:

FAR 52.216-7 ALLOWABLE COST AND PAYMENT (MAR 2000), as modified by Alternate II of DEAR 952.216-7. If the Subcontract is with a state or local government, substitute "Subpart 31.6" for "Subpart 31.2" in paragraph (a).

FAR 52.216-8	FIXED FEE (MAR 1997), if the Subcontract is cost-reimbursable (fixed fee).
FAR 52.222-26	EQUAL OPPORTUNITY (APR 2002) (Note: Download the EEO Poster at: http://www.dol.gov/esa/ ; select "Posters" then "Equal Employment Opportunity Act")
FAR 52.225-1	BUY AMERICAN ACT - SUPPLIES (MAY 2002)
FAR 52.227-1	AUTHORIZATION AND CONSENT (JUL 1995)
FAR 52.227-14	RIGHTS IN DATA-GENERAL (JUN 1987) including Alternate V and DEAR 927.409 (a) (1). If delivery of limited right data is required, add Alternate II. If delivery of restricted computer software is required, add Alternate III.
FAR 52.227-19	COMMERCIAL COMPUTER SOFTWARE-RESTRICTED RIGHTS (JUN 1987), if the Subcontract involves the acquisition of commercially available computer software and a GSA/Seller Multiple Award Federal Supply Schedule Contract is not applicable.
FAR 52.227-23	RIGHTS TO PROPOSAL DATA (TECHNICAL) (JUN 1987), if the Subcontract is based upon a technical proposal, the full text of this clause will be included in the body of the subcontract.
FAR 52.232-20	LIMITATION OF COST (APR 1984), if the Subcontract is fully funded
FAR 52.232-22	LIMITATION OF FUNDS (APR 1984), if the Subcontract is incrementally funded
FAR 52.242-15	STOP-WORK ORDER (AUG 1989), with Alternate I.
FAR 52.243-2	CHANGES - COST REIMBURSEMENT (AUG 1987). No Alternates if only supplies are furnished. Use Alternate I for services when no supplies are furnished. Use Alternate II for services when supplies are furnished.
FAR 52.244-2	SUBCONTRACTS (AUG 1998), with Alternate II. Paragraph (e) insert is: "Any subcontract or purchase order for other than "commercial items" exceeding \$100,000."
FAR 52.244-6	SUBCONTRACTS FOR COMMERCIAL ITEMS (MAY 2002)
FAR 52.246-3	INSPECTION OF SUPPLIES - COST REIMBURSEMENT (APR 1984)), if primarily for supplies.
FAR 52.246-5	INSPECTION OF SERVICES - COST REIMBURSEMENT (APR 1984), if primarily for services.
FAR 52.249-6	TERMINATION (COST REIMBURSEMENT) (SEP 1996)
FAR 52.249-14	EXCUSABLE DELAYS (APR 1984)
DEAR 952.227-9	REFUND OF ROYALTIES (FEB 1995), if "royalties" are paid under the Subcontract by the Subcontractor or a subcontractor at any tier.
DEAR 970.2903-1	STATE AND LOCAL TAXES (APR 1984)
DEAR 970.5208-1	PRINTING (DEC 2000), if printing is required under the subcontract.
DEAR 970.5204-59	WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (APR 1999), if the work is performed on-site at a DOE-owned or leased facility.
DEAR 970.5223-2	AFFIRMATIVE PROCUREMENT PROGRAM (MAR 2003)
DEAR 970.5245-1	PROPERTY (DEC 2000)

THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT EXCEEDS \$2,500:

- FAR 52.222-41 SERVICE CONTRACT ACT OF 1965, AS AMENDED (MAY 1989), if the Subcontract is principally for the furnishing of services through the use of "service employees"
- FAR 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JULY 2000)

THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT IS FOR \$10,000 OR MORE:

- FAR 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (6/98)

THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT IS FOR \$25,000 OR MORE:

- FAR 52.222-35 EQUAL OPPORTUNITY FOR FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (12/01)
- FAR 52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (12/01)
- DEAR 970.5223-4 WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2000), if the PO involves any of the hazardous activities stipulated in 10 CFR 707.2

THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT EXCEEDS \$100,000:

- FAR 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUL 1995). Use Alternate I if the Subcontract is for "commercial items".
- FAR 52.203-7 ANTI-KICKBACK PROCEDURES (JUL 1995), unless the Subcontract is for "commercial items," excluding paragraph (c)(1)
- FAR 52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)
- FAR 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)
- FAR 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 1997)
- FAR 52.219-8 UTILIZATION OF SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS CONCERNS (OCT 2000)
- FAR 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – OVERTIME COMPENSATION (SEP 2000), if the Subcontract involves mechanics or laborers and is for supplies other than "commercial items".
- FAR 52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 1996)
- FAR 52.227-3 PATENT INDEMNITY (APR 1984), if commercial supplies are furnished under the subcontract.
- FAR 52.246-1 CONTRACTOR INSPECTION REQUIREMENTS (APR 1984)

- FAR 52.247-63 PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JAN 1997), if the Subcontract involves international air transportation
- FAR 52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (6/2000), if the Subcontract involves ocean transportation of supplies other than "commercial items"
- DEAR 952.209-72 ORGANIZATIONAL CONFLICT OF INTEREST (JUN 1997), if the Subcontract is for advisory and assistance services, engineering or technical consulting, management support or professional services, or other services or activities where an OCI may exist or arise
- DEAR 970.5232-3 ACCOUNTS, RECORDS, AND INSPECTION (DEC 2000)

THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT EXCEEDS \$500,000:

- FAR 52.215-10 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (OCT 1997), if cost or pricing data is required.
- FAR 52.215-11 PRICING REDUCTION FOR DEFECTIVE COST OR PRICING DATA – MODIFICATIONS (OCT 1997)
- FAR 52.215-12 SUBCONTRACTOR COST OR PRICING DATA (OCT 1997), if cost or pricing data is required.
- FAR 52.215-13 SUBCONTRACTOR COST OR PRICING DATA – MODIFICATIONS (OCT 1997)
- FAR 52.219-9 SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN (OCT 2000), unless the Subcontractor is a small business or there are no subcontracting possibilities
- FAR 52.230-2 COST ACCOUNTING STANDARDS (APR 1998), unless the Subcontractor certifies that it is eligible for and elects to use modified CAS-coverage
- FAR 52.230-3 DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (APR 1998), if the Subcontractor certifies that it is eligible for and elects to use modified CAS-coverage
- FAR 52.230-6 ADMINISTRATION OF COST ACCOUNTING STANDARDS (NOV 1999)
- FAR 15.406-2 CERTIFICATE OF CURRENT COST OR PRICING DATA, unless the Subcontract and all Modifications are exempt from the submission of certified cost or pricing data, per FAR 15.403.
- DEAR 952.226-74 DISPLACED EMPLOYEE HIRING PREFERENCE (JUN 1997)
- DEAR 970.5204-77 WORKFORCE RESTRUCTURING UNDER SECTION 3161 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1993 (JUN 1997)

THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT INDICATES IT IS FOR RESEARCH, DEVELOPMENT, OR DEMONSTRATION (RD&D) WORK OR DESIGN WORK INVOLVING NON-STANDARD TYPES OF CONSTRUCTION:

- FAR 52.227-1 with Alternate I AUTHORIZATION AND CONSENT (JUL 1995), with Alternate I (APR 1984)
- FAR 52.243-2 with Alternate V CHANGES - COST REIMBURSEMENT (AUG 1987), with Alternate V; in place of Clause 52.243-2 with no Alternates or with Alternates I or II.

FAR 52.246-8 INSPECTION OF RESEARCH AND
DEVELOPMENT - COST REIMBURSEMENT
(APR 1984), in place of Clauses 52.246-3 or
52.246-5

DEAR 952.227-11 PATENT RIGHTS - RETENTION BY THE
CONTRACTOR (SHORT FORM) (FEB 1995), if
the Subcontractor is a Domestic Small Business
or Non-Profit Organization, as defined in FAR
27.301

DEAR 952.227-13 PATENT RIGHTS - ACQUISITION BY THE
GOVERNMENT (SEP 1997), if the
Subcontractor is not a Domestic Small Business
or Non-Profit Organization, as defined in FAR
27.301

DEAR 952.227-84 RIGHT TO REQUEST PATENT WAIVER (FEB
1998)

END OF GENERAL PROVISIONS